

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

RCA.2/1993 of RENT CONTROL APPELLATE AUTHORITY, PALAKKAD

RCP.81/1986 of RENT CONTROL COURT, PALAKKAD
(IA.2600/1992)

REVISION PETITIONER (APPELLANT/PETITIONER):

**S. MOHAMMED MOOSA, S/O. SULAIMAN
ROWTHER, RESIDING AT HOUSE NO.24/239,
T.B. ROAD, PALAKKAD TALUK.**

**BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE**

RESPONDENTS/RESPONDENTS:

- 1. K. HUSSAIN, HUSSAIN COLONY,
NEAR STATE BANK OF INDIA, PALAKKAD.**
- 2. K. KADHERSHA, RESIDING AT
CHANDRANAGAR, PALAKKAD.**
- 3. AKBARSHA, RESIDING AT CHANDRANAGAR,
PALAKKAD.**
- 4. IYASAPPA, RESIDING AT CHANDRANAGAR,
PALAKKAD.**

**5. HASSIYAMMA, T.B. ROAD,
YAKKARA, PALAKKAD.**

**6. AMEENA, W/O. LATE K.A. SULAIMAN
SAHIB, T.B. ROAD, PALAKKAD.**

**7. MUSUSHA PASHA, S/O. U.K. AKBARSHA,
3729, 10TH CROSS, 13B MAIN HAL, 2ND STAGE,
INDIRA NAGAR, BANGALORE-8.**

**8. SURFAS BHADUHA, SANTHIGIRI,
NEAR HMT COLONY, P.O. KALAMASSERY, ERNAKULAM.**

**9. ANVER BASHA, S/O. AKBARSHA,
3729, 10TH CORSS 13B MAIN HAL,
2ND STAGE, INDIRA NAGAR, BANGALORE-B.**

**10. NOWFUDEEN EHAUSHA, NO.8,
SRM ROAD, ERNAKULAM.**

**11. THASSALLAM SALIM, W/O. SALIM,
C/O. R.M. ABDULLA, HARD WARE,
MERCHANT, PATTANI STREET.**

BY ADV. SRI.N.SUBRAMANIAM

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 314 of 2004

ORDER

Balachandran, J.

The tenant in R.C.P.No.81/86 on the file of the Rent Control Court, Palakkad is the revision petitioner, in this eviction proceedings, which is now more than 21 years old. Petition for eviction of the petitioner was filed invoking Sections 11(2) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). In the said proceedings, he filed I.A.No. 508/89 to receive an additional counter and that was allowed on payment of cost of Rupees five hundred. Against the said order, the petitioner himself filed R.C.A.No.182/90 assailing the correctness of the order, allowing the IA on costs only. That appeal was dismissed on 17.1.1992. In the rent control petition, when the case stood posted for evidence, the petitioner remained absent

and he was set ex parte and order of eviction was passed against him on 19.3.1992. He filed I.A. No.2600/92 to have the ex parte order set aside, alleging that his counsel did not inform him of the dismissal of the appeal and therefore, there is no wilful laches on his part in not appearing before the Rent Control Court on 12.3.1992, when the case stood posted for evidence.

2. The Rent Control Court considered the restoration application on merits and dismissed it finding that there is no reasonable excuse for the absence of the petitioner, when the case was posted for trial. The petitioner filed R.C.A.No.2/93 challenging the order dismissing the restoration application and that also was dismissed concurring with the finding of the Rent Control Court. The petitioner had not preferred any appeal against the ex parte order of eviction and consequently, the appellate authority had no occasion to consider the correctness of the ex parte order of eviction passed by the Rent Control Court. In R.C.A.No.2/93

what the appellate authority was called upon to consider was the correctness of the order of the Rent Control Court passed on the restoration application. It was found by the authorities below that pendency of R.C.A.No.182/90 or the dismissal thereof had no bearing at all as regards the trial of the rent control petition, as no stay had been ordered in R.C.A.No.182/90. It was further observed that the rent control petition was posted for evidence on 10.3.1992 and then to 12.3.1992 and that the petitioner was set ex parte on that day, as he did not appear and an ex parte order was passed on 19.3.1992. There was no representation also on behalf of the petitioner before the Rent Control Court.

3. Though the petitioner was set ex parte on 12.3.1992 and an ex parte order was passed on 19.3.1992, the petition to set aside the ex parte order was filed only on 22.9.1992 and no petition was filed to have the delay condoned, in filing the application for setting aside the ex parte order.

There was no explanation at all as to why the application was filed with undue delay. The authorities below observed that the attempt on the part of the petitioner/tenant is to drag on the matter as far as possible, as is evident from the fact that he has filed R.C.A.No.2/93 against allowing his additional counter being received on payment of cost of Rupees five hundred. We are also of the view that the attempt of the petitioner is only to drag on the rent control petition filed 21 years back, so as to avert eviction to the extent possible. We see no merit in this revision so as to interfere with the concurrent order passed against the petitioner, disallowing his application for restoration.

This Rent Control Revision is devoid of merit and is dismissed.

(J.B.Koshy, Judge)

5th June, 2007

(K.P.Balachandran, Judge)

tkv